Office-Supreme Court, U.S.
FILED
OCT 30 1964
JOHN F. DAVIS, CLERK

No. 558

In The

Supreme Court of the United States

OCTOBER TERM, 1964

AAXICO AIRLINES, INC.,
Cross-Petitioner,

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, *et al*,
Respondent.

MEMORANDUM IN OPPOSITION TO CROSS-PETITION FOR WRIT OF CERTIORARI

CHARLES J. MORRIS
1601 National Bankers Life Building
Dallas, Texas 75201

HENRY WEISS
605 Third Avenue
New York, New York

MAURY MAVERICK, JR.
906 Maverick Building
San Antonio, Texas

Attorneys for Petitioners

REILLY PUBLISHING COMPANY — 1713 S. HARWOOD — DALLAS, TEXAS — RA 8-8385

In The

Supreme Court of the United States

OCTOBER TERM, 1964

No. 558

AAXICO AIRLINES, INC.,
Cross-Petitioner,

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, *et al*,
Respondent.

MEMORANDUM IN OPPOSITION TO CROSS-PETITION FOR WRIT OF CERTIORARI

The filing of the instant cross-petition for writ of certiorari emphasizes the importance of the questions presented in the petition for certiorari in No. 522. We deem it unnecessary to reply to the instant cross-petition except to note three items.

1. Contrary to the assertion on page 4, Aaxico did not move for dismissal of the action on the ground that the Railway Labor Act vests jurisdiction of the dispute exclusively in administrative bodies created pursuant to the Act. Such a position was an afterthought, which was not preserved in the district court. The cited record references (R. 41-2, 56-7, 116-18) and the corresponding pages in the printed record so indicate. The point was not timely in the Court of Appeals; neither is it timely in the Supreme Court.

2. The Court of Appeals did not consider cross-petitioner's point regarding alleged jurisdiction of the National Mediation Board to be of any importance to the case, for the point was not even mentioned in Judge Tuttle's opinion.

3. There is no question concerning representation in this case. Capitol Airways never assumed Aaxico's agreement, but merely employed a limited number of the furloughed Aaxico pilots from July 1, 1961 to June 30, 1962, under a separate agreement which incorporated by reference some of the terms of the Aaxico-ALPA agreement. That agreement expired on June 30, 1962, and was not renewed. Capitol Airways was not a successor to Aaxico under the Aaxico-ALPA contract [R. 473]. This same Capitol-ALPA contract was reviewed in *Capitol Airways, Inc. v. Airline Pilots Association*, 223 F. Supp. 168, [48 CCH L.C. ¶18,613] (D.C.M.D. Tenn, 1963), where the court found that

> ". . . it had been distinctly understood that Capitol would not continue to employ the [Aaxico] pilots after the expiration of the then current government contract unless it was awarded a new Logair contract then being negotiated.
>
> "Capitol did not get the contract and the Aaxico pilots were furloughed."

The instant case therefore bears no resemblance to *Brotherhood of Railway and Steamship Clerks v. United Airlines, Inc.*, 325 F.2d 576 (CA 6, 1963), Supreme Court docket No. 31, October Term, 1964.

Aaxico admitted in its Answer that ALPA's certification "has never been revoked or cancelled." [R. 596] At no time, at least not until the case was in the Court of Appeals, did Aaxico or anyone else raise a question as to ALPA's status as the certified representative of the class or craft of airline pilots "in the service of Aaxico Airlines, Inc." [R. 37, p. 1]

Conclusion

If certiorari is granted herein [No. 558] it should be for the limited purpose of bringing all of the issues related to or raised in No. 522 before the Court. The proposition of law sought by cross-petitioner, however, should be rejected, for the raising of a frivolous question concerning representation should never deprive a district court of its statutory jurisdiction to enforce the bargaining and status quo provisions of the Railway Labor Act.

Respectfully submitted,

CHARLES J. MORRIS
1601 National Bankers Life Building
Dallas, Texas 75201

HENRY WEISS
605 Third Avenue
New York, New York

MAURY MAVERICK, JR.
906 Maverick Building
San Antonio, Texas

Attorneys for Respondent

October 29, 1964